APPENDIX A — OPINION OF THE STATE OF NEW YORK COURT OF APPEALS DECIDED JUNE 8, 2010

STATE OF NEW YORK COURT OF APPEALS

No. 93

John Galliano, S.A.,

Respondent,

v.

Stallion, Inc.,

Appellant.

OPINION

LIPPMAN, Chief Judge:

A court in Paris, France entered a money judgment in favor of John Galliano, S.A. (Galliano) against Stallion, Inc. (Stallion), and Galliano seeks to have that judgment recognized in New York. The Appellate Division, applying New York's Uniform Foreign Country Money-Judgments Recognition Act, codified at CPLR article 53, concluded that the French judgment should be recognized in New York (62 A.D.3d 415, 879 N.Y.S.2d 400 [1st Dept 2009]). We granted leave to appeal and now affirm.

Appendix A

The underlying dispute is a contractual one. In 1998, Stallion entered into a licensing agreement with Les Jardins D'Avron, a French company, concerning the use of the "John Galliano" trademark for the production and distribution of luxury fur items in the United States, and Galliano was later substituted for Les Jardins D'Avron as a party to the agreement. The agreement provides that it is governed by the laws of France, and the agreement's forum selection clause, entitled "Competent jurisdiction," further provides that "[a]ny dispute which may arise in connection with this Agreement . . . shall be submitted to the competent court for the district over which the Paris Court of Appeals has jurisdiction."

Disputes between Galliano and Stallion arose with respect to royalty payments Galliano alleged that Stallion owed it under the licensing agreement and expenses Galliano believed it was owed in connection with a fashion show. For its part, Stallion believed it was owed money for various goods it had delivered to Les Jardins D'Avron.

The parties were unable to resolve these ongoing disagreements, prompting Galliano in 2002 to sue Stallion in the Commercial Court in Paris. Three attempts to serve Stallion with the French equivalent of a summons and complaint were made under the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (Hague Convention) (*see Volkswagenwerk Aktiengesellschaft v Schlunk*, 486 U.S. 694 [1988]).

In each instance the documents were delivered to Stallion and a certificate of service completed. Stallion, however, did not appear in the French proceeding, and judgment amounting to "the exchange value in euro as of the date of payment of the amount of USD 178,810," plus specified interest, was entered in Galliano's favor in October 2004. Galliano commenced this proceeding three years later to enforce the judgment in New York.

Stallion argues that New York should not recognize the judgment of the French court against it because that court lacked personal jurisdiction over Stallion. Stallion asserts that the purported service under the Hague Convention was ineffective because the documents delivered to it were written in French and were not accompanied by an English translation. Absent proper service, the argument continues, Stallion cannot be said to have received effective notice of the proceeding in Paris, and a defendant's lack of notice of the foreign proceeding that resulted in a money judgment against it must result in non-recognition of that judgment in New York under CPLR article 53 (*see* CPLR 5304 [a] [2], [b] [2]).[1]

"New York has traditionally been a generous forum in which to enforce judgments for money damages rendered by foreign courts," and, in accordance with that tradition, the State adopted the Uniform Foreign

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1. Below, Stallion also relied on CPLR 2101 (b), an argument rejected by Supreme Court that Stallion has since abandoned.

Money-Judgments Recognition Act as CPLR article 53 (*CIBC Mellon Trust Co. v Mora Hotel Corp.*, 100 NY2d 215, 221 [2003]). Article 53 "applies to any foreign country judgment which is final, conclusive and enforceable where rendered even though an appeal therefrom is pending or it is subject to appeal" (CPLR 5302), and "a foreign country judgment is considered 'conclusive between the parties to the extent that it grants or denies recovery of a sum of money'" (*CIBC Mellon Trust Co.*, 100 NY2d at 221 [quoting CPLR 5303]).

Generally, a foreign money judgment is to be recognized in New York under article 53 unless a ground for non-recognition under CPLR 5304 is applicable. Grounds for non-recognition include a lack of personal jurisdiction over the defendant by the foreign court (*see* CPLR 5304 [a] [2]) and a defendant's failure to receive "notice of the proceedings in sufficient time to enable him to defend" (CPLR 5304 [b] [2]).

CPLR 5304's grounds for non-recognition of foreign money judgments must be read together with CPLR 5305, however, which provides that a "foreign country judgment shall not be refused recognition for lack of personal jurisdiction if . . . the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved" (CPLR 5305 [a] [3]). Plainly, as the Appellate Division rightly concluded (*see* 62 AD3d at 416), Stallion did just that when it entered into the licensing agreement given that agreement's forum selection clause.

Stallion urges, however, that the Appellate Division's reading of CPLR 5305 effectively negates the notice component of a court's proper exercise of personal jurisdiction over a defendant, and Stallion asserts that it did not receive adequate notice of the proceedings in Paris because the documents purportedly served on it pursuant to the Hague Convention were written in French, unaccompanied by an English translation.

Notice of a proceeding is, of course, a fundamental component of a court's proper exercise of personal jurisdiction over a party, and CPLR 5304 itself expressly recognizes a lack of notice as a ground for not recognizing a foreign money judgment in New York (*see* CPLR 5304 [b] [2]). We agree with Stallion that if recognition of a foreign money judgment were sought in New York and the defendant had received no meaningful notice of the foreign proceeding, that lack of notice would serve as a legitimate basis for not enforcing the judgment in our State, as the entry of such a judgment would not comport with our conception of personal jurisdiction or our notion of fairness. This, however, is not that case. The Appellate Division concluded that Stallion "received notice of the French action [and] its service by personal delivery is unlikely to give rise to any objections based on due process" (62 AD3d at 416). We agree.

We first note that, in seeking enforcement of a foreign money judgment in New York, "the judgment creditor does not seek any new relief against the judgment debtor, but instead merely asks the court to

perform its ministerial function of recognizing the foreign country money judgment and converting it into a New York judgment" (*CIBC Mellon Trust Co.*, 100 NY2d at 222). "[T]he inquiry turns on whether exercise of jurisdiction by the foreign court comports with New York's concept of personal jurisdiction, and if so, whether that foreign jurisdiction shares our notions of procedure and due process of law" (*Sung Hwan Co., Ltd. v Rite Aid Corp.*, 7 NY3d 78, 83 [2006]). "If the above criteria are met, and enforcement of the foreign judgment is not otherwise repugnant to our notion of fairness, the foreign judgment should be enforced in New York under well-settled comity principles without microscopic analysis of the underlying proceeding" (*id.*).

Those criteria are met here, and, on this record, the enforcement of the French judgment is not repugnant to our notion of fairness. Stallion was well aware of its ongoing disputes with Galliano, and it was also aware that, under the licensing agreement, those disputes, if litigated, would be adjudicated in accordance with French law by a court in France. Stallion was delivered court papers written in French, first by a U.S. Marshal, then subsequently on two occasions by process servers from Process Forwarding International (the entity selected by the Department of Justice to carry out service in the United States under the Hague Convention), all in an effort to notify it of the commencement of the French proceeding.

Stallion disputes that these service efforts complied with the Hague Convention because the papers written

in French were not accompanied by an English translation. However, as long as we do not find the procedure used to be fundamentally unfair, the propriety of the service under the Hague Convention was an issue for the court in France. Our inquiry now under CPLR article 53 is more circumscribed; we need only determine at this stage whether the recognition requirements of article 53 have been met.

Significantly for our purposes in applying article 53 in this case, before it could properly issue a judgment against Stallion in Stallion's absence, Article 15 of the Hague Convention required the Paris Commercial Court to consider whether service on Stallion was properly made or whether "the document was actually delivered to the defendant or to his residence by another method provided for by" the treaty (for example, service "voluntarily" accepted as contemplated by the second paragraph of Article 5)(Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, [1969] 20 U.S. T. 361, T.I.A.S. No. 6638). Moreover, in whatever form service takes, Article 15 further requires that it be "established" - again, before judgment may be entered in a foreign defendant's absence — that the service abroad was made "in sufficient time to enable the defendant to defend" itself in the proceeding (*id.*) (notably, language that is identical to that used by our Legislature in CPLR 5304 [b] [2]). Given that the Paris Commercial Court entered a judgment in Galliano's favor in Stallion's absence, it would seem clear that it was "established" to that court's satisfaction that Article 15's requirements were met.

On this record, we are satisfied that Stallion had notice of the proceeding in France "in sufficient time to enable [it] to defend" itself in that action (CPLR 5304 [b] [2]), and the Paris Commercial Court's exercise of personal jurisdiction over Stallion under these circumstances was not unfair. Moreover, as noted, in the licensing agreement Stallion agreed to submit any contractual disputes to the jurisdiction of the French courts prior to the commencement of the proceeding in Paris and, pursuant to CPLR 5305 (a) (3), the French judgment should not be refused recognition.

On this record, because the French court's money judgment in favor of Galliano does not run afoul of our conception of personal jurisdiction or our notion of fairness, well settled CPLR article 53 law compels the recognition and enforcement of the French judgment in New York.

The Appellate Division order, insofar as appealed from, should be affirmed, with costs.

Order, insofar as appealed from, affirmed, with costs. Opinion by Chief Judge Lippman. Judges Ciparick, Graffeo, Read, Smith, Pigott and Jones concur.

Decided June 8, 2010

APPENDIX B — DECISION AND ORDER OF THE SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT DECIDED MAY 5, 2009

SUPREME COURT OF NEW YORK, APPELLATE DIVISION, FIRST DEPARTMENT

(2009 NY Slip Op 03612)

John Galliano, S.A.,

Plaintiff-Respondent,

v.

Stallion, Inc.,

Defendant-Appellant.

Decided on May 5, 2009
Tom, J.P., Andrias, Saxe, Moskowitz, DeGrasse, JJ.

May 5, 2009, Entered

Order and judgment (one paper), Supreme Court, New York County (Marylin G. Diamond, J.), entered April 29, 2008, awarding plaintiff, on its motion for summary judgment in lieu of complaint, the aggregate sum of $ 601,284.52, including interest at 5% prior to October 7, 2004, and 9% thereafter, and order, same court and Justice, entered September 26, 2008, which denied defendant's motion to renew, unanimously modified, on the law and the facts, renewal granted, the

rate of interest after October 7, 2004 decreased to 5%, and otherwise affirmed, without costs.

The motion court should have granted renewal to consider the affidavit of Fran Cannara because the allegation that Cannara had accepted service of process voluntarily and told the process server she was authorized to accept service was only first raised in plaintiff's reply papers on its summary judgment motion (*see e.g. Welch v Scheinfeld*, 21 AD3d 802, 808 [2005]), and the court's rules did not permit defendant to submit a sur-reply.

Renewal should also have been granted in the interest of justice (*see generally Rancho Santa Fe Assn. v Dolan-King*, 36 AD3d 460 [2007]) to consider the documents that defendant obtained from the Department of Justice via a Freedom of Information request. In its opposition to plaintiff's summary judgment motion, defendant submitted printouts from the web site of the Hague Conference on Private International Law. While the court's rejection of the printouts was not sua sponte, defendant may very well have been surprised by such rejection, as other courts have relied on the Hague web site (*see e.g. Casa de Cambio Delgado v Casa de Cambio Puebla, S.A. de C.V.*, 196 Misc 2d 1, 6 [2003]; *Saysavanh v Saysavanh*, 145 P3d 1166, 1170 [2006]).

Even after considering the materials defendant submitted on renewal, we conclude that summary judgment was properly granted to plaintiff. It is true

that CPLR 5304(a)(2) declares a foreign country judgment to be not conclusive if the foreign court never had personal jurisdiction over the defendant. However, CPLR 5305(a)(3) states that a foreign country judgment should not be refused recognition for lack of personal jurisdiction if "the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign court with respect to the subject matter involved." Prior to commencement of the French proceedings, defendant entered into a contract in which it agreed that all disputes would be submitted to a French court, effectively establishing personal jurisdiction under CPLR 5305(a)(3) (*Dynamic Cassette Intl. Ltd. v Mike Lopez & Assoc.*, 923 F Supp 8, 11 [ED NY 1996]).

Defendant received notice of the French action; its service by personal delivery is unlikely to give rise to any objections based on due process (*see Burda Media, Inc. v Viertel*, 417 F3d 292, 303 [2d Cir 2005]).

Contrary to defendant's claim, New York's public policy favoring resolution of disputes on the merits does not preclude enforcement of a foreign default judgment (*see Westland Garden State Plaza, L.P. v Ezat, Inc.*, 25 AD3d 516 [2006]).

Normally, plaintiff would be entitled to interest at the New York rate of 9% from October 7, 2004, the date of the French judgment (*see e.g. Wells Fargo & Co. v Davis*, 105 NY 670 [1887]). However, in its papers, plaintiff requested interest at only 5% (the French rate)

from the date of the French judgment until the date of the New York award. Therefore, it waived its right to a higher interest rate for the period prior to that award (*see Goldbard v Empire State Mut. Ins. Co.*, 156 NYS2d 324, 329 [1956], *mod on other grounds* 164 NYS2d 294 [App Term 1957], *mod* 5 AD2d 230, 171 N.Y.S.2d 194 [1958]).

THIS CONSTITUTES THE DECISION AND ORDER OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: MAY 5, 2009

APPENDIX C — DECISION AND ORDER OF THE SUPREME COURT OF NEW YORK, NEW YORK COUNTY DATED FEBRUARY13, 2008

SUPREME COURT OF NEW YORK,
NEW YORK COUNTY

PRESENT: HON. MARYLIN G. DIAMOND, *Justice*

INDEX NO. 109292/07

MOTION DATE

MOTION SEQ. NO. 001

MOTION CAL. NO.

JOHN GALLIANO, S.A.,

Plaintiff,

-against-

STALLION, INC.,

Defendant.

Cross-Motion: [X] No.

Upon the foregoing papers, it is ordered that: The plaintiff has moved, pursuant to CPLR 3213, for summary judgment in lieu of complaint to enforce a foreign judgment entered on default by a French Court

in Paris on October 7, 2004 against the defendant Stallion, Inc., a New York corporation. The judgment is in the amount of $ 335,297.81, plus interest.

Background

On or around February 25, 1998, Stallion entered into a licensing agreement with a company named Les Jardins D'Avron, a French company which has a principal place of business in Paris but also maintains an office in New York and, according to the defendant, transacts business in New York. The licensing agreement concerned the use of the "John Galliano" trademark for the production and distribution of luxury fur garments in the United States. It provided that Les Jardins would receive the rights to various trademarks in exchange for royalty payments in amounts specified in the agreement and payable in American dollars. The agreement was in English and, according to the defendant, all of the negotiations and correspondence both before and after the agreement was executed were in English. However, the agreement provided that it was to be governed by the laws of France and that any dispute which might arise in connection with the agreement should be submitted to a Paris court.

At some point, the plaintiff, a French company, assumed the obligations of Les Jardins with respect to the licensing agreement. Thereafter, a dispute arose in which plaintiff accused Stallion of failing to make all of the required royalty payments due under the licensing agreement and Stallion claimed that the plaintiff owed

money for various goods and merchandise that Stallion had delivered to Les Jardins. The plaintiff also claimed that Stallion owed it money for expenses related to a haute couture show. Sometime in 2002, the plaintiff commenced a lawsuit against Stallion arising from this dispute in the Commercial Court in Paris. Stallion, however, never appeared and, following a trial, the judgment which is the subject of this proceeding was entered on default on or about October 7, 2004. This proceeding was commenced three years later because the judgment has never been satisfied.

Discussion

To prevail on a motion for summary judgment in lieu of complaint, the plaintiff must establish that there are no triable issues of fact regarding its entitlement to the money sought. *See Popular Construction, Inc. v. Bhutta*, 208 AD2d 514 (2nd Dept.1994); *Neuman v. Otto*, 114 AD2d 791 (1st Dept.1985). Article 53 of the CPLR sets forth the substantive requirements which must be met before a foreign country money judgment will be recognized in New York. *See* CPLR 5303-5305. These provisions require that (1) the foreign court which issued the judgment had both personal jurisdiction over the judgment debtor and subject matter jurisdiction over the case, (2) the foreign court was an impartial tribunal utilizing procedures compatible with due process of law and (3) the enforcement of the foreign judgment would not be unfair, conducive to fraud or violate New York public policy. *See CIBC Mellon Trust Co. v. Mora Hotel Corp.*, 100 NY2d 215, 222 (2003); *Lenchyshyn v. Pelko*

Elec., 281 AD2d 42, 46 (4th Dept 2001). Generally, if the foreign country money judgment satisfies these requirements, it is conclusive and should be recognized. *See* CPLR 5302, 5303, 5305(a).

The sole issue in this proceeding is whether the French court had personal jurisdiction over the defendant Stallion. In support of its motion, the plaintiff has submitted two affidavits from Veronique Proix, an attorney who represented the plaintiff in France. Ms. Proix asserts that the plaintiff's lawsuit in France was commenced by serving three writs upon the defendant's New York office and that such service was effected pursuant to the Hague Convention. *See* Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters dated November 15, 1965, 20 UST 361, TIAS No. 6638 (1965). A French writ is the equivalent of a summons and complaint. According to Ms. Proix, the three writs were served upon the defendant by personal delivery at its New York office on, respectively, December 16, 2002, February 5, 2004 and March 16, 2004 and were all accepted by Stallion employees. Ms. Proix claims that the March 16, 2004 writ was the one upon which the French court rendered its judgment. The plaintiff also claims that it served Stallion with a copy of the judgment on February 9, 2005. Stallion has not submitted any affidavits or evidence which contradicts the affidavit of Ms. Proix or the process servers.

In opposing the plaintiff's motion, Stallion nevertheless contends that the plaintiff did not properly

serve the writs or the judgment and that this court, pursuant to CPLR 5304(a)(2), should therefore deny recognition of the French judgment. It first argues that service of the writs was improper under the Hague Convention because the writs were never translated into English. However, contrary to the defendant's contention, the Hague Convention does not require that documents served in the United States be translated into English. Article 5 of the Hague Convention provides that the "Central Authority" of the country where service is made shall effect service by a method prescribed by its internal law for the service of documents in domestic actions upon persons who are within its territory. It goes on to provide that the Central Authority *may* require the document to be written in, or translated into, the official language or one of the official languages of the country where service is made. In this respect, the Central Authority designated by the United States is the Department of Justice. The defendant has not cited to any rule or regulation promulgated by the Department of Justice which requires that foreign judicial documents be translated into English prior to service within this country's borders. Nor has Stallion cited to any case law, and this court has found none, which holds that the United States requires foreign judicial documents served in the United States pursuant to the Hague Convention to be translated into English. Although Stallion refers to a website which states that service of documents in the United States pursuant to article 5 of the Hague Convention requires that the documents be translated into English, the website is of unknown origin and

Stallion does not offer any explanation as to why this court should give it the force of law. Indeed, as the plaintiff points out, the fact that the Central Authority accepted its papers and effected service is prima facie proof that the papers were in the proper form and that service was made in compliance with the Convention. *See Resource Trade Finance, Inc. v. PMI Alloys, LLC*, 2002 WL 1836818 * 4 (SDNY 2002)

As a second argument, Stallion relies on CPLR 2101(b), which requires that all papers served in New York be in English. However, this provision clearly requires a translation only when a foreign language document is filed with the court or introduced into evidence as an exhibit. *See Rosado v. Mercedes-Benz of North America*, 103 AD2d 395 (2nd Dept 1984). The plaintiff fulfilled this requirement when it served translated copies of the French judgment along with its motion papers. The CPLR does not otherwise even address the issue of whether a pleading in a foreign legal proceeding has to be translated into English prior to service upon a party located in New York. In any event, as already discussed, such service is governed by the Hague Convention.

Notwithstanding the defendant's protestations to the contrary, there is nothing unfair or inappropriate about the service of the French court documents herein without a translation. As already noted, the Licensing Agreement between the parties which forms the basis of the French lawsuit and judgment states that it was to be governed by the laws of France and that any

dispute which might arise in connection with the agreement should be submitted to a Paris court. Thus, Stallion had every reason to anticipate that, in the event of litigation between the parties, it would be subject to proceedings in a French court conducted in French. The fact that the Stallion employees who were served with the three writs may not have spoken French does not mean that Stallion was deprived of adequate notice that the French action had been filed. Rather, at best, it shows that Stallion received papers it did not immediately understand and choose simply to ignore them. This is not a basis for denying recognition of an otherwise valid foreign judgment.

Stallion's third argument is that the plaintiff served the writs improperly and in violation of CPLR 311 because it delivered them to employees of Stallion who were not authorized to accept service of legal documents. This argument is without merit. The plaintiff has submitted the affidavit of Maria Bass, who served the third writ upon Fran Cannara, a Stallion employee. According to Bass, Cannara not only accepted service of the writ voluntarily, but also represented that she was authorized to do so. Notably, neither Cannara nor any other Stallion employee has submitted an affidavit which contradicts Bass. The plaintiff has also submitted affidavits of service which assert that the judgment and copies of the other writs were served and accepted by Stallion employees. Stallion has not offered any affidavits or evidence which cast doubt on these assertions. By not refuting the plaintiff's evidence that its employees voluntarily accepted service, Stallion has

failed to raise any issue of fact regarding the propriety of service on these individuals. *See Fashion Page v. Zurich Ins. Co.*, 50 NY2d 265, 273-74 (1980); *Arvanitis v. Bankers Trust Company*, 286 AD2d 273, 273-74 (1st Dept. 2001); *Cambio Delgado v. Puebla*, 196 Misc 2d 1, 9 (Sup Ct. Queens Co 2003). Although Stallion contends that Cannara and the other employees who accepted the papers were not authorized to do so, the process server cannot be expected to know the defendant's internal practices. Since service was otherwise made in a manner calculated to give the defendant fair notice of the legal proceedings against it, the court is persuaded that service was properly made. *See Seward & Kissel v. Smith Wilson Co., Inc.*, 814 F Supp 370, 375 (SDNY 1993). *See also Carlin v. Crum & Forster Ins. Co.*, 170 AD2d 251 (1st Dept. 1991); *De Vore v. Osborne*, 78 AD2d 915, 916 (3rd Dept. 1980).

Since service was proper under the Hague Convention and the CPLR, Stallion has failed to show the existence of any of the grounds set forth in article 53 of the CPLR which supports the denial of recognition of the French judgment. Accordingly, the plaintiff's motion for summary judgment in lieu of complaint should be and is hereby granted.

Appendix C

Settle judgment.

ENTER

Dated: 2/13/08

s/ MGD
Marylin G. Diamond, J.S.C.

Check one: [X] FINAL DISPOSITION
[ ] NON-FINAL DISPOSITION